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‘Satan is Black’- Frantz Fanon’s Juridico-Theology of Damnation and Global Order

Awake, arise or be for ever fall’n
Satan in John Milton’s *Paradise Lost*¹

Frantz Fanon’s work is currently undergoing a resurgence of interest, both within the academy and in wider political circles. Fanon continues to be cited as an antecedent for contemporary anti-racist/anti-imperial theorists and activist groups, inspiring movements from Black Lives Matter in the U.S.A to the Economic Freedom Fighters in South Africa and many in-between.² However, as the recent publication of Fanon’s writings show, as a scholar, he was not only concerned with realm of political contestation but also drew on art, literature and philosophy to inform his grand theories regarding the colonial ordering of the modern world.³ Fanon offers great value across disciplinary boundaries, however the question therefore arises as to the reason behind the relatively lack of substantive engagement with Fanon as a resource for critical legal scholarship, at least in comparison to other major theorists of the twentieth century such as Foucault or Derrida? For instance, there has been some growing interest in post/decolonial readings of law, particularly international law, which is seen to facilitate the persistence of relations formed by European colonialism even after the formal end of the colonial system.⁴ However, engagement with Fanon across this literature remains underdeveloped, even as general interest in his work continues to rise. The failure to draw on Fanon within studies of the law may be the result of a latent assumption of Fanon as revolutionary but not an intellectual, with his writings being considered more programmatic than theoretical; *The Wretched of the Earth* continues to be taken to be ‘the handbook for the Third World Revolution’ as it

was called upon its release.⁵ In their crudest manifestations, readings of Fanon can turn him into a figure who, on account of being heavily invested in the material struggle of armed conflict, offers with his writings more of an instructional guide to national liberation than insights for critical scholarship, particularly for essentially reformist disciplines such as law. This reading leads to what Gayatri Spivak has described as the making of ‘Fanon into a clay model for revolution.’⁶ This article will commence by showing how such a reading overlooks nuances in Fanon’s framework and instead I will offer a reading of Fanon highlighting his critique of the juridico-theology underpinning Euro-modernity.

One element that a strictly materialist, programmatic reading of Fanon tends to erase is his consistent referral to concepts and imagery drawn from Christian theology in his descriptions of the colonial structuring of the world order. Fanon’s writings offer guidance for understanding how the metaphysical structure of a coherent, Christian universal order is translated into the material reality of our modern global order in ways that the conventional assumptions of materialist readings would obscure. Therefore, I posit that a significant gap within the current literature on both post/decolonial and juridico-theological readings of law is the lack of engagement with the significance of Fanon’s posthumous magnum opus *Les Damnés de la Terre* or *The Wretched of the Earth*, as well as his wider body of work. The value of Fanon for these sub-disciplines and moreover, for anyone interested in the intersections of law, violence, theology and coloniality, lies in his understanding of the Euro-modern conception of idealised humanity as produced through the ‘damnation’ of colonized peoples. This article will address the absence of analysis on the theological language and metaphors that he uses throughout his writing through a close-reading of Fanon that brings into clear focus the theological undercurrents that anchor the Euro-modern

concept of ‘humanity’ that persists into the contemporary moment, perhaps nowhere with greater import than within the discourse and norms of international law.

A supplementary element of this article will be to emphasise the full scale of the heretical challenge forwarded in *Les Damnés de la Terre* by placing it in conversation with John Milton’s epic poem *Paradise Lost*. Conforming with Jane Gordon’s case for engaging with ‘creolizing’ readings of canonical figures and paying attention to the echoes of *Paradise Lost* within Fanon’s call for decolonial revolution, I will clarify the theoretical insight offered by Fanon’s writings.⁷ Through Fanon, we can see the relevance of Milton’s narrative of Satanic rebellion against the deific order for the colonial context. The reading together of these authors, who ordinarily would be categorised as wholly removed from one another, allows firstly, the theological framework and language that Fanon used to inform his theory of colonialism to become clearer and secondly to problematize orthodoxies of the context of emerging European colonialism and the rise of international law in which Milton was writing *Paradise Lost*.

A I. The Theological Fanon

Fanon’s work did not dismiss or deemphasise the way the material relations of production underwrote colonial ordering, but neither did he simply reduce racial subjectivisation to a manifestation of structural economic relations. Reading Fanon closely reveals how the reciprocal recognition of dialectical class antagonism under capitalism was underwritten by a formative (mis)recognition of the colonized subject through colonization.⁸ Moreover, this anchoring of Euro-modernity in the subjugation of the colonized subject can be seen to also facilitate the transition of the Euro-

modern perspective into a self-acclaimed position of not only universality but also omnipotence. Once an image of Euro-modernity as functioning as a deific surrogate is understood by the reader, then the metaphysical quality of Fanon's writings begins to appear as more than a stylistic idiosyncrasy. His consistent use of theological descriptors to capture the condition of colonized existence speaks to an appreciation of colonization being not simply a material process of primitive accumulation, but also as a juridical and theological process of turning particular universal subjects into deific surrogates (Sovereign, White, European Man) and others into damned peoples (the colonized, racialised other)

The reading of Fanon offered above immediately disturbs particular orthodoxies held about the Martiniquan psychiatrist. Critics such as Hannah Arendt admonished Fanon for championing 'glorified violence for violence sake [...] motivated by a much deeper hatred for bourgeois society.'⁹ For Arendt, Fanon's discussions of race is a politics based on purely 'biological terms', thereby rendering his call for revolution 'non-political' and incapable of improving the conditions of collective life through such particularism.¹⁰ Arendt's reading of Fanon has been extensively critiqued in the body of literature however, which has illustrated the gaps within her attempt to delegitimise the potential of political violence as a tool for liberation.¹¹ However, Arendt's misreading of Fanon still shares terrain with some of those who celebrate Fanon but only through reading his theory as operating solely on a material register. For example, in a spirited attempt to recover Fanon from the characterisations of him as mere prophet of violence, Immanuel Wallerstein attempts to reconcile Fanon with a European tradition of rationalism, declaring 'Frantz Fanon was a man of reason and of rational action, very much a product and an exemplar of the spirit of the Enlightenment in the tradition of Marx.'¹² This picture of Fanon,

though critically insightful, keeps his writings contained within the realms of the material.

An overly-materialist image of Fanon is troubled by an inability to account for his consistent articulation of the decolonized experience through the grammar of the theological. Fanon teaches us that the ‘colonial world is a Manichean world,’ with the European symbolising the omnipotent good and the colonized becoming the absolute evil.¹³ He speaks to how the subjugation of the colonized functions as if by deific decree; the colonized ‘accepts the disintegration ordained by God, bows down before the settler.’¹⁴ For Fanon, the condition of the Negro under colonization is not simply a question of biology but infused within these ‘scientific’ claims is a latent theology: the negro is not only determined as being ‘strong, athletic, potent’ but also raises the spectre of the ‘devil, sin’ through association.¹⁵ If the Negro strives to be acceptable to Euro-modernity they will be unable to descend even ‘into a real hell’ but if they recognise and confront their condition, they will find themselves trapped in the ‘zone of non-being,’ a descriptor that recalls Saint Augustine’s famous description of evil.¹⁶ Translating a theological order of being into the material order of colonization, Fanon shows us how the discursive field of modernity renders the colonized as the ‘symbol of Evil’ while Euro-modernity claims the characteristics of even the ‘merciful God’ for itself.¹⁷

Any cursory review of Fanon’s work will betray many more examples of this consistent referral to the theological in order to describe the conditions of colonization, as will be illustrated over the remainder of this article. It is an aspect of Fanon’s writing that presents an intriguing question for scholars; the theological Fanon demands an explanation that escapes strict materialism. In comparison to say, Walter Benjamin, a European theorist with whom Fanon’s apocalyptic visions of

political violence might be placed in conversation with, readings of the work that a Christianized grammar of thought may be doing within Fanonian scholarship has been under-explored.¹⁸ In the service of illustrating Fanon's value to both post/decolonial and juridico-theological critiques of law, the examples above provide an ideal entry point.¹⁹ For Fanon's persistence in drawing on theological does not simply betray a Christianized style of discourse but the linguistic choices he makes are inscribed within a broader framework for thinking through colonial and post-colonial relations.

A II. Damnation and Colonization

The few engagements with the religious aspect of Fanon's thought have also tended to emphasise Fanon's materialism, assuming him to be a dogmatic critic of religion, an atheist who, in-step with a vulgar tradition of Marxism, dismissed Christianity as pure ideology, mobilized only to entrench colonial power.²⁰ Scholarship on Fanon has assumed him to be wholly dismissive of the theological realm by reading within his writings a vehement rejection of not only European Christianity but also of native religions as well.²¹

However, another understanding of operative function of the theology within Fanon's writing is offered by Lewis Gordon's work.²² Gordon emphasizes, for those quick to categorize Fanon as a theorist imagining the world only through the scientific or material, the importance of remembering that 'Fanon's formal education was exclusively western and [...] predominately Roman Catholic, [which] means that the grammar of normative life would take the form of the churches founding imagery in spite of Fanon's existential atheism.'²³ Biographical work on Fanon tells us that by being raised in a petit-bourgeois, colonial family where 'church going was something

to be taken serious', Fanon's familiarity with ecclesiastical concepts and ideas would have been entrenched from an early age.²⁴ An understanding of the extent to which the theological will have coloured Fanon's formative experience of colonization begins to provide a lens through which to view the consistency of his aforementioned reference to Christian concepts and descriptors to capture the nature of colonialism.

Rather than a presuming that as a scientist and Marxist, Fanon exemplifies a strict, atheistic rejection all things religious for the materialist or scientific realm, if we proceed from an understanding how theological concepts continue to inform ostensibly secularized modern concepts such as politics or law, i.e what is known as political/juridico-theological readings, a deeper insight is offered by Fanon's writings. This is not to speculate on Fanon's own personal attitude to religion, but to illustrate how Fanon's references to religion are best read not as a contradiction in his thought but rather as the expression of his understanding of Euro-modernity being informed by an adoption of a theological schema. In short, could Fanon be better read as casting the dispossession and violence suffered by the colonized in the making of modern world order as a tale of a *Paradise Lost*? Furthermore, can we see Fanon's description of the condition of the colonized as equivalent to hell before calling on those colonized to storm the heavens in violent revolution as echoing the call issued by the heroic depiction of Satan in John Milton's epic poem of deific rebellion?

It is important to remember when reading Fanon's references to colonized life as 'hell', 'damnation' or 'evil' that the Christian gospels are, in fact, largely devoid of depictions of these ideas. When asking, what does it mean to imagine 'hell' or 'evil', we should start from an appreciation of how most of our popular understandings of these now ubiquitous concepts actually derive not from the Bible but actually from medieval and early modern literature and art.²⁵ Recognising the role that artistic

representation has played in producing our imaginings of heaven and hell helps to understand Gordon's methodological decision to read Fanon's *Black Skin, White Masks* alongside the primary representation of hell in the European literary canon – Dante Alighieri's *Inferno*, the most famous section of *La Commedia*. Rather than seeing Fanon's first book in the orthodox manner of an attempt at psychoanalytical self-interrogation, Gordon illuminates the way in which *Black Skin, White Masks* traces the structure of Dante's unnamed protagonist's descent through hell. In his first book Fanon captures the nature of racism as the paradoxical attempt to try to force a set of humans out of the category of humanity, a structure that builds a Hegelian dialectic of recognition between two (European) human subjects on top of a relegation of black humanity into a condition of damnation, now to be cast as a contradiction in terms.²⁶ Gordon shows us how *Black Skin, White Masks* guides the reader towards being submerged in the full omnipotent experience of racial subjugation, just as Virgil guides the protagonists of Dante's epic poem to the depths of the centre of Hell.²⁷ Furthermore, as Virgil eventually leads the protagonist out of damnation at the end Fanon's similarly closes *Black Skin, White Masks* with an optimistic 'final prayer: O my body, make of me always a man who questions' as he emerges from the depths of racial self-hatred.²⁸ This assertion of the 'I' of the colonial subject as a full being at the end of *Black Skin, White Masks*, represents the heart of Fanon's theoretical project. He is declaring in the face of a world that insisting on this claim being a contradictory impossibility that 'I' am Black *and* 'I' am human, and perhaps most crucially, that this declaration of Black humanity is not dependent upon white recognition. The conclusion of *Black Skin, White Masks* provides a perspective that Fanon will transfer from the solipsistic towards the international in his later writings; this basic assertion of Black humanity becomes the vantage point from

which he then analysed the global systems and norms that seek to render such an assertion illegitimate.

The Wretched of the Earth remains the outstanding exemplar of Fanon's global schema. However, currently under-developed in the literature on this book is the debt that it carries to a theological grammar underpinning Fanon's understanding of global order, similar to Gordon's reading of *Black Skin, White Masks*. An immediate example is the title: *The Wretched of the Earth* is entitled *Les Damnés de la Terre* in its original French and much of the philosophical significance of this concept of 'damnation' is lost through the English translation into 'Wretched.' The description of 'damnation' speaks to how the metaphysical structure of theology is translated into the material reality of our modern global order. Fanon's understanding of the modern world order credits European colonialism with the creation of damned peoples who are physically marked through their deviation from a predetermined standard. As the standard is geo-temporally located within Euro-modernity, the cleaving of difference necessarily demarcated a European exceptionalism that justified the material exploitation of colonialism, showing how the political project of colonialism bleeds into the corporeal project of racialisation. If colonial division provided the geo-temporal structure for world order, racism concretised this structure through corporeal markers (skin colour, hair type, facial features, etc.) to impose a discursive language of branding upon human bodies.²⁹ In short, Fanon speaks to how a juridico-theological mythopoetics behind the language of racism facilitates the construction of particular peoples as damned.³⁰ This argument becomes clearer upon taking notice of the use of juridico-theological mythopoetics in *Les Damnés de la Terre* as the extract below exemplifies:

The colonial world is a Manichean world. It is not enough for the settler to delimit physically, that is to say with the help of the army and the police force, the place of the native. As if to show the totalitarian character of colonial exploitation the settler paints the native as a sort of quintessence of evil.³¹

What Fanon describes in the above passage is how colonization was not merely a practice of land seizure, resource exploitation or political control, but was also the translation of the deific conceptions of absolute good and absolute evil onto different categorisations of humanity. Fanon further speaks to the intertwinement of theology and colonialism when he argues how in the colonies ‘the church does not call the native to God's ways but to the ways of the white man, of the master.’³² This description illustrates how the role of the bible in colonization is not merely to encourage the colonized to worship the white man’s God but moreover to accept a schema that understands the white man *as* a God, as the standard to be idealised. Inversely the colonized occupies the position that evil does in the theological structure, within the colonial schema ‘[a]ll values, in fact, are irrevocably poisoned and diseased as soon as they are allowed in contact with the colonized race’ hence why the colonized puts destruction of the native, the ‘parasites, the bearers of disease, on the same level as the Christian religion which wages war on embryonic heresies and instincts, and on evil as yet unborn.’³³ Like with *Black Skin, White Masks*, an attention to the way that theological symbols and metaphors pepper *Les Damnés de la Terre* are important for a full understanding of the philosophical depths of the text.

A. III. A ‘study of revenge’³⁴

The reading of Fanon that emphasises his understanding of the indebtedness of

the racialised structuring of the colonial world to the Christainised conceptions of being can be aided through placing *Les Damnés de la Terre* into conversation with the classic literary account of revolt by the damned against the deific order in the Western canon, 17th Century English revolutionary John Milton's epic poem *Paradise Lost*.³⁵ Like Fanon, Milton uses his most famous poem to offer an apocalyptic narrative of rebellion and if, following Gordon, we can see how Dante and *Black Skin White Masks* mirror each other through their accounts of the descent into damnation, then reading Fanon's final book and its call for decolonization alongside Milton's depiction of the Satanic revolt against the divine allows for a finer appreciation of the philosophical sophistication of Fanon's provocation. Milton's poem was famously provocative in its retelling of the biblical story of the fall but in a manner that made God or Adam the protagonist but rather Satan. *Paradise Lost* allows the reader to sympathise with injustice that has been endured by a heroic Satan and to understand his commitment into bringing 'foul disorder' into the celestial hierarchy of being that has sought to assign him to damnation.³⁶ In his resentful anger and righteous indignation, Milton's Satan can be seen as offering a prototype through which to read Fanon's 'native' in *Les Damnés de la Terre*. In his earlier writings, Fanon had already described how, within the colonial schema, 'Satan is black.'³⁷ Sustaining this metaphor, we can see how Fanon's 'native' echoes Milton's Satan in challenging a celestial hierarchy of another kind, advocating for decolonization through 'a program of complete disorder.'³⁸

Supporting my argument of reading *Paradise Lost* together with *Les Damnés de la Terre* in a manner similar to Gordon's reading of *Black Skin, White Masks* alongside *Inferno* is the body of literary scholarship that has already sought to establish Milton's poem as the canonical respondent to Dante's epic work.³⁹ For

instance, George F. Butler illustrates how Milton draws not only theological inspiration from Dante, but also read *La Commedia* as a political work, one that provided a schema through which we could understand and thereby question ecclesiastical and political power.⁴⁰ The political element within the struggle of deific order is amplified in Milton's tale of the fall from Paradise, with an immediate distinction between Milton and Dante's epic poems being the presentation of the figure of Satan. Dante's Satan remains trapped within his condition of damnation, a muted, monstrous representation of the fate that awaits humanity should it not halt its descent; Milton instead turns the fallen angel into a Promethean hero, he becomes the protagonist of the story with his poetic, seductive expressions of envy and pride convincing his fellow outcasts from Paradise to engage in rebellion against divine authority. In his recasting of the Satanic figure in heroic terms, Milton provides suggestion to his own history as not only a poet but also an active participant in revolution, a contributor to the English revolution that resulted the visceral defeat of sovereign authority, the execution of the monarch proclaiming to be God's chosen representative of earth.⁴¹

Though of course not determinate, the biographic should be taken into consideration when placing Milton's most famous work, *Paradise Lost*, as sitting at the forefront of the early modern period's translation of questions of religious contestation into questions of law and juridical order.⁴² The poem was produced in a context in which it is recognised that legal and theological ideas animate one another. Moreover, it is worthwhile recalling that Milton witnessed revolution occurring not only in the domestic order but also in the global order of law; his epic poem was written in the midst of the great expansion of European empire. The age in which Milton was thinking and writing was one in which the primitive accumulation of

Euro-modern empire building combined the contest for heaven with the conquest of the earth in a manner that orthodox international legal scholarship has often separated rather than treating as thoroughly interwoven.

A more critical strain of scholarship has begun to argue for reading the early modern period, particularly the formative era of European colonization, as being productive of the modern law of nations.⁴³ In addition, it has also begun to establish the important role that Christian eschatology and, by extension, wider theology plays in informing the presuppositions of modern law.⁴⁴ Combining these two trends, scholars have turned to seeing Francisco De Vitoria, the sixteenth-century Spanish theologian and jurist emerging from the famed School of Salamanca, as the founding father of international law.⁴⁵ Christopher Warren places Milton's *Paradise Lost* in conversation with the history of international law, showing him to have been a keen reader of the founding theorists of the law of nations, including Vitoria. As Warren states 'Milton was almost certainly familiar with Vitoria' and in his epic poem 'Milton was laying bare the opportunistic Vergilianism that had featured heavily among Iberian writers on the law of nations beginning with the Spanish Dominican Francisco de Vitoria.'⁴⁶ Warren further suggests that 'Milton uses the episode to satirize a voraciously instrumental imperialism that has conscripted epic, linguistic, and legal conventions for seemingly fathomless imperial projects.'⁴⁷ The age in which Milton was thinking and writing was one which figures such as Vitoria were synthesising the juridical and the theological in service of the transition of international community to be anchored on Europe rather than the Christendom. Milton's epic poem, written contemporaneously with the rapid expansion of European imperialism, reads as a metonym for the world-ordering events of his age, European empire building echoing the mythology of contest for heaven in the material the

conquest of the earth. Warren suggests that it ‘was precisely Milton’s project to signal changed legal relations’ of his time in the poem, following the innovations in jurisprudence produced by Vitoria and company in response to the Spanish conquest of the Americas.⁴⁸ A reading of *Paradise Lost* as a ‘dramatic repurposing of a writer like Vitoria’ to conceptualise the ‘fall’ as analogous to the severance of claims to just title performed through imperialism, ensures that understandings of Milton do not forget the connections that his writings offer to the co-current period of the formation of international law mapping of a colonial world order.⁴⁹

The connection between Vitoria, early international law and *Paradise Lost* helps us see the theological undercurrent to imperialism through this allegory for empire.⁵⁰ Moreover, Milton’s narrative arch of an Angelic War prior the ‘Fall of Man’ distinguishes his retelling from other accounts of the Genesis story. Milton’s tale of original sin is shadowed by the story of the ‘war in heaven’, retold at length by the Angel Raphael in Book V of *Paradise Lost*. Milton’s epic poem illustrates the formative role that the damnation of the heaven’s fallen angels plays in the making of the material world. In the casting out of the fallen angels, we find a parallel for the dispossession and expulsion suffered by the colonized. As aforementioned in the early discussion of *Black Skin, White Masks* and *Inferno*, on a philosophical level the production of the colonized as a subject functioned as a ‘secularized’ equivalent of the descent into hell. If colonization was legitimised by the jurisprudence of its time, then we must ask what are the elements of the juridico-theological thought of that moment that could facilitated the descent?

A. IV. The Damnation of the Colonized and the Primitive Accumulation

With Milton writing in context of European colonialism and allowing his work to be informed by the writings of early European international jurists, it invites clarification as to the role law played in the production of the colonial world order. International legal scholarship has, across a variety of theoretical approaches, recognised the role that colonialism played in the formation of the discipline. Providing the canonical Marxist engagement with international law, Evgeny Pashukanis contends that international law seeks to mask the competing class positions inherent across an imperial, global capitalist market through a juridical claim of foundational sovereign equality.⁵¹ Speaking directly to the role of colonial violence in the production of this order, Marxist international legal scholarship has emphasised the way in which the juridical framework was implemented to legitimise the conquest of the Americas that produced the world capitalist market.⁵² The early modern law of nations is taken to embody not only the material violence of colonialism, but also to facilitate the abstraction of commodity exchange.⁵³ Furthermore, other materialist readings of international law have argued that the role of the discipline in facilitating colonial dispossession reveals its function as a mechanism of primitive accumulation.⁵⁴ Drawing on Marx's famed concept describing the founding violence that was used to decouple populations from ways of reproducing their lives other than through compliance with capital's demands, an understanding of international law as primitive accumulation turns the discipline from a universal jurisprudence governing the world market into primarily a means of rendering invisible the colonial extraction through which capital is initially accumulated. Mark Neocleous summarises this idea of international law as primitive accumulation, arguing that the discipline was:

Concerned not just questions of sovereignty or legal title by conquest, as per mainstream international law, or imperialism and racial supremacy over ‘the other’, as per critical international law [...] but was in fact centrally concerned with the violent enclosure of land and resources for capital accumulation [...] that is, with the process of primitive accumulation.⁵⁵

This understanding of international law as primitive accumulation does the crucial work of exposing an interconnected legal framework governing relations of trade, conflict, land acquisition and maritime expeditions as having enabled and sustained the emergence of capitalism, through colonialism. Even in the contemporary moment, an imperial legacy continues to inform the judicial regulations that maintain the relations of property and contract across borders, facilitating the access capital claims to its primary resources. However, an over-emphasis on an image of colonial violence as creating the material conditions for capitalist relations of production does risk masking the importance of the construction of the colonized peoples in a distinct mode of juridical personality and theological debt that underpinned this shift. This is what we can understand as the juridico-theology of international law.

Vitoria helps to illuminate this juridico-theological element. More specifically, it is in two sets of Vitoria’s lectures, *De Indis Noviter Inventis* and *De Jure Bellis Hispanorum in Barbaros*, that international legal scholars and historians root the origins of the discipline.⁵⁶ The topic of these lectures are a juridical conceptualisation of the relations between the Spanish and the Amerindians, in other words, the ordering of the formative relations of the European colonial project. To posit Vitoria as an origin for what we currently call international law is to accept that international law ‘did not precede and thereby effortlessly resolve the problem of Spanish-Indian relations; rather, international law was created out of the unique issues generated by

the encounter between the Spanish and the Indians.’⁵⁷ Scholarship on Vitoria initially celebrated him for recognising the humanity of the colonial subject and thereby inviting the colonized within the law of nations, to be bound by the same laws and principles that governed the European.⁵⁸ However, more recent critiques have emphasised Vitoria’s ultimate accommodation of colonial violence once the colonized peoples are within the remit of the law.⁵⁹ Once brought within the law, the colonized are held to be substandard by its norms, thereby licensing a particularly insidious form of violence, ‘precisely because it is presented in the language of liberty and even equality.’⁶⁰ It is their invitation within the totalising order of law that renders them damned, impelled to realise standards of ‘ideal’ humanity that were produced in contradistinction to them. For instance, Vitoria’s invitation of the colonized into a universal jurisprudence professes to a recognition of equivalent juridical personality between the colonized and the European based on notions of trade and hospitality; in fact Vitoria overlooks or ignores how the ‘trade’ between the colonized and the European took the form of violent plunder by one side rather than exchange.⁶¹ The material realities of the context to which he was writing meant that Vitoria’s *jus gentium*, which initially appears to legislate universal rights, in practice ultimately authorises Spanish incursion into and exploitation of the Americas. Once conscripted within the remit of international law, any transgression of its norms by the colonized, such as resistance against the colonizer’s incursions, was rendered an act of aggression, thereby legitimizing war.

Moreover, Vitoria’s legal ordering of colonial violence should be remembered as being a product of political/juridico-theology as much as geopolitics. Vitoria remained a committed theologian throughout his career and was explicit in his quest to bring to bear his Thomism onto the political questions of the day.⁶² His ability to

straddle the sacred and the secular captures the impetus of the early modern period to ground formerly theological questions in the terms of the juridical. Vitoria's inclusion of the colonized within his universal jurisprudence but in a condition of primary exclusion, traps them within the confines of a legal order that rejects them, whilst also not allowing them to escape that order. The inclusion that is professed by the Vitorian schema is always an inclusion deferred, as the colonized is invited inside the universal whilst also being charged to be the constitutive outside against which it is contrasted. The colonized is therefore trapped in an impossible position: full inclusion into the universal order is dependent upon being able to conform, to progress to a standard that pre-determined by European and therefore held to their unique notions of what would constitute an ideal universal humanity.⁶³ Vitoria's translation of a theological schema onto these questions of universal law and order allows the European to function as the 'perfect', standard for universal humanity, complete and ontologically whole within itself.⁶⁴ In contradistinction to the 'perfect' standard, Vitoria placed the colonized as 'perfectable', currently imperfect but to be elevated towards the European standard eventually.⁶⁵ However, the impossibility of that elevation is illustrated by the persistence of the distinction between the 'perfect' European and the 'perfectable' colonized into the modern notions of 'developed' and 'developing' peoples within contemporary, humanitarian international law. Instead, what early modern jurisprudence achieves, rather than generously invite the colonized into the realm of universal humanity, is in fact to facilitate the confinement of the colonized within what Fanon elegantly describes as *damnation on the earth*.⁶⁶ The colonized and their practices are rejected by a universal into which they are compelled to enter, a paradox that demands that they must become 'perfect' human but can only do by realising a standard that was constituted in opposition to their very being. Damnation

describes the theologically indebted jurisprudence that constructs what Fanon states as ‘the immobility to which the native is condemned,’ the structure of the universal law leaves the colonised in the equivalent of being damned.⁶⁷

A. V. Fanon and the Theodicy of Law

Taking account of the juridico-theological aspect of European colonialism aids the appreciation of Fanon’s philosophical value. Fanon’s work remains an essential resource for scholars who theorise race as a primary organising principle of the global political order, however whilst there has been some engagement with him by those concerned with questions of law, this area of Fanonian scholarship could still be seen as underdeveloped, especially considering the body of literature that emphasises the relationship between colonialism and the international legal order.⁶⁸ For Fanon, question of the juridical play an key role in colonial world order, with colonialism as a system being propelled by a belief in ‘the necessity to establish law and order among the barbarians.’⁶⁹ As recent international legal scholarship has established the colonial encounter as a violent originary moment of the Euro-modernity, an engagement with Fanon, particularly his avocation of colonialism as ‘violence in its purest state,’ only enriches these readings of the imperial roots of the modern world order, bringing the post/decolonial critiques of international law together with the rich tradition of legal scholarship concerning the intimate relationship between law and violence.⁷⁰ Echoing the perspective of Walter Benjamin, who emphasised particularly the ‘law-making’ potential of legal violence, Fanon’s reading of colonial violence illuminates its operation as a ‘constitutive-yet paradoxical- legal force’ and, I would argue, gestures towards Vitoria’s invitation of the colonized into a juridical schema

constituted by their exclusion.’⁷¹ Fanon reads the violence of the colonizer and the law imposed by the colonial legal order as one and the same. Crucially, this legal system does not merely separate the colonized from means of subsistence outside of capital relations as is captured by the Marxist descriptor of primitive accumulation but is further constitutive of the colonial legal personality itself. Gary Boire captures how ‘colonial law is, for Fanon, a multivalent phenomenon: a material force, a form of representation, a multidimensional constitutive discourse, a system that forms colonial subjects and subjectivities.’⁷² Far from simply being a codified set of rules, law categorizes and constitutes notions of ideal humanity and in the process of colonization this categorization would be made explicit through the signifier of race.

Fanon’s conceptualization of colonization as damnation, when properly unpacked, helps us to read international law as facilitating the encasing of particular bodies within this paradoxical space of inclusion/exclusion; the subject position of the contradictions of modernity is damned to reside in what he describes as ‘the zone of non-being’.⁷³ The description Fanon chooses immediately raises the question of ‘theodicy’ as held within the tradition of scholasticism.

Theodicy refers to the problematic of accounting for the presence of evil in God’s world. Was it outside the power of God to simply erase the evil contained in the world? If so, how could scholastics maintain a belief in God’s omnipotence? Was evil external to God’s will? If it was, then it disrupted God’s omnipotence and if it was not, then it disrupted God’s claim to be good.⁷⁴ Augustine sought to resolve this problem through casting evil as ‘not a nature but a kind of non-being’.⁷⁵ For Augustine, evil should not be imagined as an entity in itself: ‘For what is that which we call evil but the absence of good?’⁷⁶ Evil does not possess a nature itself; it consists only as the failed realisation of what should be: the good. Returning to the

‘zone of non-being’, which for Fanon, encapsulates the lived experience of the racialised/colonized other, we see how the conscription of the colonized into a universal order – as a failed realisation of the idealised European – mirrors this conception of theodicy. For Fanon, it was not a coincidence but a necessary function that within ‘the totalitarian character of colonial exploitation the settler paints the native as a sort of quintessence of evil’.⁷⁷ The zone of non-being functions as the limits of the colonized paradoxical existence. The colonized are trapped in ‘the hellish cycle,’ indefinitely rendered as a failed model in the hierarchy of humanity now arrogated to the realm of the universal.⁷⁸ The racial/colonial other exists only in negation and it is through this state of negation against the idealised humanity of Euro-modernity that it takes on the condition of ‘absolute evil’ within an ostensibly secularized world. Fanon clarifies this by illustrating how within this order the racial/colonial other ‘is the corrosive element, destroying all that comes near him; he is the deforming element, disfiguring all that has to do with beauty or morality; he is the depository of maleficent powers.’⁷⁹ Lewis Gordon further explains this parallel between Fanon’s understanding of ‘the damned’ and Augustine’s classic response to the problem of theodicy by stating:

Western thought [...] led to a theodicy of Western civilisation [...] systems that were complete and intrinsically legitimate in all aspects of human life [...] while its incompleteness, its failure to be so, hallmarks the ‘dark side of thought’ lived by those constantly crushed under its heels, remained a constant source of anxiety [...] People of colour, particularly black people live the contradictions of this self-deception.⁸⁰

Following the structure of theodicy, the racial subaltern subject cannot be truly other to the universal humanity of modernity, lest that humanity not be truly universal and

the system not be truly complete. Yet those for whom the characteristics of humanity have been historically denied exist as ‘the not-yet’ within this schematic, those damned are trapped in a process that is indefinitely deferred. Fanon captures this paradox with his description of the racial subaltern subject as ‘rooted at the core of a universe from which he must be extricated.’⁸¹ This structure of ‘humanity’ matches the structure offered by Vitoria to anchor the early modern Law of Nations and that continues to inform contemporary, humanitarian international law.

To see a connection between the ‘secularized’ global order of Euro-modernity and the Christianised global order that preceded it points to an explanation for why the colonized/racially subaltern subject takes on ‘the principle of evil’.⁸² Fanon guides us in appreciating how the ontological structure Augustine called upon to account for evil is transformed under modernity into the explanation for the racial subaltern subject. For within modernity’s universal humanity, the racial other ‘is not a man’.⁸³ Instead, he ‘is declared insensible to ethics; he represents not only the absence of values, but also the negation of values. He is, let us dare to admit, the enemy of values, and in this sense he is the absolute evil’.⁸⁴ This preceding quote from *Les Damnés de la Terre* offers the only reference to *Black Skins, White Masks* in Fanon’s 1961 posthumous classic, illustrating the importance of the configuration of the colonized/racial subaltern as ‘evil’ within the schema of world ordering that Fanon seeks to unpack.⁸⁵ This theological connection of the enclosing of the subjectivity of the colonized in a condition of damnation— detailed in *Black Skins, White Masks* — with the world order that sustains itself through the licensing of violence upon that damned subject — as detailed in *Les Damnés de la Terre* — provides the key link between Fanon’s two outstanding scholarly contributions, and, I would argue, his intellectual project as a whole.

It is the ontological structure of colonialism described above, the encasing of particular categories of humans in an order of being that renders them non-beings, that helps clarify the philosophical significance of the comparisons that Fanon consistently draws between Christian conceptions of evil and the construction of the colonized within the order of Euro-modernity. For Fanon, it is not coincidental that ‘the Devil, the Evil Spirit, the Bad Man, the Savage are always symbolized by Negroes.’⁸⁶ The founding violence of colonialism is not merely the primitive accumulation that facilitates capitalist relations of production, but moreover, it is the construction of a political and juridical identity of damned peoples, peoples whose fall, as with the rebel angels of *Paradise Lost*, functions as the pre-requisite of making a new world. Once we appreciate this we can understand why Fanon declares that, within the theodician schema of European colonialism, ‘Satan is black.’⁸⁷

Appreciating the juridico-theological element of colonization gives us a new perspective on Fanon’s materialism, as well as adding a further element to the emphasis he places on understanding the world through a lens of racialised violence. While still a Marxist, Fanon recognised that the colonial relationship was absent of a dialectical structure. Fanon perceived the mutual recognition of the Hegelian master and slave dialectic as reaching its limit in the colonial world and instead illustrated how the colonial relation is not a relation of subjugation but rather a non-relation. The mistake that Marxist scholarship was making was the presumption that race was produced solely through capital’s voracious greed and used primarily as a means to divide workers. In a scathing engagement with future collaborator Jean-Paul Sartre’s critique of the Negritude movement, Fanon took care to stress the error committed by Sartre, for whom colonial exploitation was a substrate of the universal struggle between labour and capital. In *Black Orpheus* Sartre dismisses the identitarian basis

of political engagement, concluding his review of the radical potential offered by an embrace of Black identity by arguing that ‘negritude appears as the up-beat of a dialectical progression: the theoretical and practical affirmation of white supremacy is the thesis.’⁸⁸ For Sartre, negritude, as the preeminent articulation of racialised identity politics at that time, could only be a minor term in the movement towards revolution; it was a particularised form of anti-racist racism that could function so as to radicalise the black population, allowing them en-masse to obtain the necessary class consciousness to become active participants in a universal revolutionary struggle.⁸⁹ Fanon admonished Sartre’s critique of negritude for erasing the native’s claim to full human subjectivity through enfolding that claim back into a state of dependency. Referring to Sartre’s writings in *Black Orpheus*, Fanon states:

And, when I tried, on the level of ideas and intellectual activity, to reclaim my negritude, it was snatched away from me. Proof was presented that my effort was only a term in the dialectic.⁹⁰

Fanon’s response was a rejection of the orthodox Marxist conception of revolution as a historically determined conclusion to the internal contradictions of capital-labour relations. Showing how the Euro-modern conception of humanity was not, in fact, universal but rather exclusive, Fanon highlights a need for a transformation of our ideas of what constitutes the ‘human’ to be placed at the heart of the decolonial struggle. When this aspect for Fanon is fully acknowledged, then a decolonizing revolution, becomes one of not only a question of a change in official legal status or just a formal recognition of the status of sovereignty; instead, a decolonial revolution is challenged with the blasphemous task of transforming conceptions of the human. With the global order being produced through the casting out of the colonized,

Fanon's decolonization requires us 'to humanise this world which has been forced down to animal level by imperial powers.'⁹¹ This call should not be confused for the Sartre's dismissal of the question of race as merely a minor term as within a grand, materialist conception of history. Rather than wait for the colonized to reach the European standard in order to join in with the revolutionary struggle against capitalism, Fanon instead implores the European to 'fall' into an alliance with the colonized. Fanon concludes *Les Damnés* with a generous appeal to Europeans to overcome their investment in Euro-modernity and 'fall' in with those who have been damned in the process of their deification. Describing his vision of decolonisation, he states:

This huge task which consists of reintroducing mankind into the world, the whole of mankind, will be carried out with the indispensable help, of the European peoples, who themselves must realize that in the past they have often joined the ranks of our common masters where colonial questions were concerned. To achieve this, the European peoples must first decide to wake up and shake themselves, use their brains, and stop playing the stupid game of the Sleeping Beauty.⁹²

Les Damnés de la Terre recognised the material violence that Sartre emphasised in *Black Orpheus* and that is captured by the idea of early international law as primitive accumulation. Fanon describes colonialism as concerned with extracting the most 'essential value from the native' providing capital with a regular supply of cheap labour.⁹³ He recognises the colonialism is also concerned with separating the colonized from their means of subsistence, appropriating resources of which 'the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity.'⁹⁴ However, Fanon also pushed beyond these standard Marxist

critiques to illustrate the further juridico-theological project to lock the colonized in a condition of damnation, caught both within and against the totalising (Europeanised) humanity. To be damned is to be rendered permanently deficient within an order of being that you cannot escape, to be confined permanently to this condition of privation. Such an admonishment is experienced as a metaphysical crisis, as if the victim was ‘weighed down by the curse of God.’⁹⁵ To undo the ‘disintegration ordained by God’ Fanon requires for the colonized to rebel against this deific order and for their European allies to embrace the ‘fall’ themselves.⁹⁶ Sartre’s correction of his earlier missteps in *Black Orpheus* in his preface to *Les Damnés de la Terre* provides an example of how this may be achieved.⁹⁷

A. VI. Conclusion

The importance of Fanon’s understanding of Euro-modern conception of humanity as produced through the damnation of colonized subjects offers relevance to those who read a political/juridico-theology within European colonialism and the co-current development of international law. Marx famously describes primitive accumulation as occupying the same role in political economy as original sin does in Christianity.⁹⁸ Fanon’s conception of Euro-modernity as produced through the damnation of the colonized provides a telling insight into this theological anchoring of the material world. Moreover, it holds particularly relevance in light of the contemporary rise of the discourse of ‘humanitarianism’ within international law. This conception of the human, used to anchor ideas about international crimes against humanity to human rights to humanitarian intervention, contains not only a colonial but also a theological inheritance. Thinking of the historical context in which *Les*

Damnés de la Terre was written, the distance between the ‘new humanity’ that Fanon called for and the humanitarianism remaking the international legal order at the same time, in the mid-twentieth century, is stark. Whilst the humanitarianism of the United Nations called for the colonized to join a universal (Europeanised) standard, a move betrayed as impossible since Vitoria invitation in the sixteenth century, Fanon challenges the very notion of ‘humanity’ in its Euro-modern instantiation. The Fanonian call for decolonization is not offered through an appeal to particularism/exclusive racial identity, but rather a demand to reconstruct the universal conception of humanity through the revolt of those damned by the current order. Rather than the demand of humanitarian law for the colonized to realise the impossible standards of ‘humanity’, instead it intends to force the colonizer to shed the illusions of this idealised humanity. Recognising this element of Fanonian thought offers a corrective to the relative absence of substantive engagements with his work in the literature on post/decolonial international law and the political/juridico-theological international law. Fanon’s offers greater value to juridical scholarship once the theological aspect of his writing is read alongside the notion of humanity that continues to anchor international law. Fanon illustrates how international law’s current conception of humanity is produced through the translation of the theological order onto the colonial relation, with the European as a deific surrogate and the colonization as the damned. In short, if the law’s mandates that ‘Satan is black’ then we should follow Fanon in a Satanic revolt, a revolt against modern law itself.

Word Count incl footnotes: 9,989

¹ John Milton, *Paradise Lost* (London: Penguin Books 1996), p.27.

² See the May/June 2016 issue of *The Critique*, Black Lives Matter (Part II): Understanding The New Movement For Racial Justice, in particular Nigel C. Gibson, ‘Why Frantz Fanon Still Matters: Failure & Reciprocity’, *The Critique*, June 14, 2016, <http://www.thecritique.com/articles/why-frantz-fanon-still-matters/> [Accessed 09/01/17] or Mbuyiseni Quintin Ndlozi, ‘What Frantz Fanon Teaches us-EFF’, *PoliticsWeb*, July 20, 2016, <http://www.politicsweb.co.za/politics/what-frantz-fanon-teaches-us--eff> [Accessed 09/01/17].

³ See Frantz Fanon, *Alienation and Freedom*, ed. Jean Khalfa and Robert J. C. Young, trans., Steven Corcoran, (London, Bloomsbury, 2017).

⁴ See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, Cambridge University Press, 2005); Sundhya Pahuja, *Decolonizing International Law: Development, Economic Growth and the Politics of Universality* (Cambridge, Cambridge University Press, 2011); and Fleur Johns, Richard Joyce and Sundhya Pahuja, eds., *Events: The Force of International Law* (London: Routledge-Cavendish, 2011).

⁵ See the front cover of the Ballantine Books edition of Frantz Fanon, *The Wretched of the Earth* (New York, Ballantine Books, 1973). Throughout this article, the original title of *The Wretched of the Earth*—*Les Damnés de la Terre*—will be used so as to emphasise the importance of Fanon’s conception of the colonized as ‘damned’. Subsequent references are to this edition.

⁶ Gayatri Spivak, ‘Fanon as Example and Figure: A Conversation Between Oscar Guardiola-Rivera and Gayatri Chakravorty Spivak’, *Naked Punch* 18 (June, 2016), pp.1-17.

⁷ Jane Anna Gordon, *Creolizing Political Theory: Reading Rousseau through Fanon* (New York, Fordham University Press, 2014).

⁸ See Frantz Fanon, *Black Skins, White Masks* (New York, Grove Press, 1991) for a full discussion on the misrecognition of the colonized subject and an underwriting of the modern dialectic, particularly ‘The Negro and Hegel’, pp.168-173. Subsequent references are to this edition.

⁹ Hannah Arendt, *On Violence* (Boston, Houghton Mifflin Harcourt, 1970), p.65.

¹⁰ Arendt, *On Violence*, p.75.

¹¹ For critiques of Arendt’s reading of Fanon, see Elizabeth Frazer and Kimberly Hutchings, ‘On Politics and Violence: Arendt contra Fanon’, *Contemporary Political Theory* 7.1 (2008), pp.90-108 or

Neil Roberts, 'Fanon, Sartre, Violence, and Freedom', *Sartre Studies International* 10.2 (2004), pp.139-160.

¹² Immanuel Wallerstein, 'Frantz Fanon: Reason And Violence', *Berkeley Journal of Sociology* 15 (1970), pp. 222-231, p.223.

¹³ Fanon, *Wretched of the Earth* (London: Penguin, 2001), p.40. Subsequent references are to this edition.

¹⁴ Fanon, *Wretched of the Earth*, p.54.

¹⁵ Fanon, *Black Skins, White Masks*, p.128.

¹⁶ Fanon, *Black Skins, White Masks*, p.2.

¹⁷ Fanon, *Black Skins, White Masks*, p.139; p.36.

¹⁸ For readings of Fanon and Benjamin see Zahid R Chaudhary, 'Subjects in Difference: Walter Benjamin, Frantz Fanon, and Postcolonial Theory,' *Differences* 23.1 (2012), pp.151-83 or Neelam Srivastava, 'Towards a critique of colonial violence: Fanon, Gandhi and the restoration of agency', *Journal of Postcolonial Writing* 46.3-4 (2010), pp.303-319.

¹⁹ Among the few engagements include Michael Lackey, 'Frantz Fanon on the Theology of Colonization', *Journal of Colonialism and Colonial History* 3.2 (Fall, 2002), n.p. and Fredrico Settler, 'Frantz Fanon's Ambivalence towards Religion', *Journal for the Study of Religion* 25.2 (2012), pp.6-21. For engagements with the influence of Islam on Fanon see Fouzi Slisli, 'Islam: The Elephant in Fanon's *The Wretched of the Earth*', *Critique: Critical Middle Eastern Studies* 17.1 (February, 2008), pp. 97-108.

²⁰ Lackey, 'Fanon'.

²¹ Settler, 'Fanon's Ambivalence', pp.6-21.

²² See Lewis R. Gordon, 'Race, Theodicy and the Normative Emancipatory Challenges of Blackness', *The South Atlantic Quarterly* 112.4 (2013), pp.725-736; Lewis R. Gordon, *What Fanon Said: A Philosophical Introduction To His Life* (New York, Fordham University Press, 2015); or Lewis R. Gordon, 'Through the Hellish Zone of Nonbeing: Thinking through Fanon, Disaster, and the Damned of the Earth', *Human Architecture: Journal Of The Sociology Of Self-Knowledge* 5.3 (Summer, 2007), pp.5-12.

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- ²³ Lewis R. Gordon, 'Through the Zone of NonBeing: A reading of Black Skin White Masks in Celebration of Fanon's Eightieth Birthday', *The C.L.R. James Journal* 11.1 (Summer, 2005), pp.1-43, p.3.
- ²⁴ David Macey, *Frantz Fanon: A Biography* (London, Verso, 2012), p.54.
- ²⁵ For further on the literary production of Heaven and Hell, See Philip C. Almond, *Heaven and Hell in Enlightenment England* (Cambridge, Cambridge University Press, 1994) or Alice K. Turner, *The History of Hell* (New York, Harcourt Brace, 1993).
- ²⁶ Drucilla Cornell, 'Fanon today', in *The Meanings of Rights: The Philosophy and Social Theory of Human Rights*, eds. Costas Douzinas and Conor Gearty (Cambridge, Cambridge University Press, 2014), pp.121-137, p.122.
- ²⁷ Gordon, 'Zone of NonBeing', p. 26.
- ²⁸ Fanon, *Black Skins, White Masks*, p.181.
- ²⁹ Jane Anna Gordon and Lewis R. Gordon, *Of Divine Warning: Reading Disaster in the Modern Age* (Boulder, CO, Paradigm Publishers, 2009), p.9.
- ³⁰ Gordon and Gordon, *Of Divine Warning*, p.28.
- ³¹ Fanon, *Wretched of the Earth*, p.40.
- ³² Fanon, *Wretched of the Earth*, p.41.
- ³³ Fanon, *Wretched of the Earth*, p.41.
- ³⁴ Milton, *Paradise Lost*, Book VI.
- ³⁵ The reading together of Fanon and Milton performed in this article is not to suggest that Fanon was directly influenced by Milton when he was writing *Les Damnés de la Terre*. Such a suggestion is beyond the scope of this article and would require further archival research before it could be confirmed or denied. This article keeps its focus on the resonance between their schemas.
- ³⁶ Milton, *Paradise Lost*, Book VI
- ³⁷ Fanon, *Black Skins, White Masks*, p.141.
- ³⁸ Milton, *Paradise Lost*, Book VI; Fanon, *The Wretched of the Earth*, p.35.
- ³⁹ For readings of *Paradise Lost* as indebted to Dante, see Oscar Kuhns, 'Dante's Influence on Milton', *Modern Language Notes* 13.1 (January, 1898), pp.1-6 or Robert Hollander, 'Milton's Elusive Response to Dante's Comedy in *Paradise Lost*', *Milton Quarterly* 45.1 (March, 2011), pp.1-24.
- ⁴⁰ See George F. Butler, 'Giants and Fallen Angels in Dante and Milton: The "Commedia" and the

Gigantomachy in "Paradise Lost", *Modern Philology* 95.3 (February, 1998), pp.352-363.

⁴¹ For a full review of Milton's revolutionary activities and their interplay with his writings, please see Christopher Hill, *Milton and the English Revolution* (New York, Viking Press, 1978).

⁴² Alison A. Chapman, *The Legal Epic "Paradise Lost" and the Early Modern Law* (Chicago, University of Chicago, 2017).

⁴³ See for example Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, Cambridge University Press, 2005); Matthew Craven, Malgosia Fitzmaurice and Maria Vogiatzi, eds., *Time, History and International Law* (Leiden, Martinus Nijhoff Publishers, 2007); Diane Kirkby and Catherine Coleborne, eds., *Law, History, Colonialism: The Reach of Empire* (Manchester, Manchester University Press, 2001).

⁴⁴ Alain Supiot, *Homo Juridicus: On the Anthropological Function of the Law*, trans. Saskia Brown (London, Verso, 2007), p.18. Also see Beard, *Political Economy of Desire*; Samuel Moyn, *Christian Human Rights* (Philadelphia, University of Pennsylvania Press, 2016); or Robert Meister, *After Evil: A Politics of Human Rights* (New York: Columbia University Press 2011).

⁴⁵ See David Kennedy, 'Primitive Legal Scholarship', *Harvard International Law Journal* 27.1 (Winter, 1986), pp.1-98; James Brown Scott, *The Spanish Origin of International Law* (Oxford, Clarendon Press, 1934); or Anthony Pagden, ed., 'Dispossessing the Barbarian: the Language of Spanish Thomism and the Debate over the Property Rights of the American Indians,' in *The Languages of Political Theory in Early-Modern Europe* (Cambridge, Cambridge University Press, 1987), pp.79-98. Pagden notes 'Vitoria and his pupils, and the pupils of his pupils down to the generation of the Jesuits Luis de Molina (1535-1600) and Francisco Suarez (1548-1617), have come to be called "The School of Salamanca"', although the Italian term "seconda scholastic" is a better description' (p. 80).

⁴⁶ Christopher Warren, 'John Milton and the Epochs of International Law', *European Journal of International Law* 24.2 (2013), pp.557-581, p.566-569.

⁴⁷ Warren, 'Milton', p.569.

⁴⁸ Warren, 'Milton', p.579.

⁴⁹ Warren, 'Milton', pp.579-580.

⁵⁰ Martin Evans, *Milton's Imperial Epic: Paradise Lost and the Discourse of Colonialism* (Ithaca, Cornell University Press, 1996). Evans provides extensive evidence that Milton was influenced by the colonial context in which he was writing.

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- ⁵¹ Evgeny Pashukanis, 'International Law (1925–1927)', repr. in Piers Beirne and Robert Sharlet, eds., *Pashukanis: Selected Writings on Marxism and Law* (London, New York, Academic Press, 1980), p.169, p.172.
- ⁵² See Susan Marks, ed., 'Introduction', in *International Law on the Left: Re-examining Marxist Legacies* (Cambridge, Cambridge University Press 2008), pp.1-29.
- ⁵³ China Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Boston, Brill, 2005), p.169.
- ⁵⁴ Mark Neocleous, 'International Law as Primitive Accumulation; Or, the Secret of Systematic Colonization', *The European Journal of International Law* 23.4 (2012), pp.941-962.
- ⁵⁵ Neocleous, 'International Law', p.954.
- ⁵⁶ See Anghie, *Imperialism*, or Peter Fitzpatrick, 'Latin Roots: The Force of International Law as Event', in Johns, Joyce and Pahuja, *Events*, pp.43-54.
- ⁵⁷ Anghie, *Imperialism*, p.15.
- ⁵⁸ See Brown Scott, *Spanish Origin*, or James Brown Scott, *The Catholic Conception of International Law* (repr. New Jersey, The Lawbook Exchange, 2007).
- ⁵⁹ See Fitzpatrick, 'Latin Roots' or Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford, Oxford University Press, 1990).
- ⁶⁰ Martti Koskenniemi, 'Vitoria and Us: Thoughts on Critical Histories of International Law', *Rechtsgeschichte – Legal History* 22 (2014), pp. 119-138, p.122.
- ⁶¹ Miéville, *Between Equal Rights*, p.176.
- ⁶² Anthony Pagden, 'Dispossessing the Barbarian', pp.79-98.
- ⁶³ Peter Fitzpatrick, 'The Revolutionary Past: Decolonizing Law and Human Rights', *Metodo@ International Studies in Phenomenology and Philosophy* 2.1 (2014), p.121.
- ⁶⁴ Vitoria, 'On the Essence of Law' in Anthony Pagden and Jeremy Lawrence, eds., *Vitoria: Political Writings*, trans. Jeremy Lawrence (Cambridge, Cambridge University Press, 1991), pp.260-261.
- ⁶⁵ Vitoria, 'Essence of Law', p.301: 'A perfect community or commonwealth is therefore one which is complete in itself ... such commonwealths are the kingdom of Castile and Aragon, and others of the same kind.'
- ⁶⁶ Fanon, *Wretched of the Earth*. Original title: *Les Damnés de la Terre*.
- ⁶⁷ Fanon, *Wretched of the Earth*, p.28.

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- ⁶⁸ For legal scholarship that draws on Fanon, see See Patricia Tuitt, *Race, Law, Resistance* (London, The GlassHouse Press, 2004); Gary Boire, 'Legalizing Violence: Fanon, Romance, Colonial Law' in Michael Freeman and Andrew Lewis, eds., *Law and Literature: Current Legal Issues* (Oxford, Oxford University Press, 1999), II, pp. 581–602; Cornell, 'Fanon today'; and Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, Cambridge University Press, 2003).
- ⁶⁹ Frantz Fanon, *Toward an African Revolution* (New York, Grove Press, 1994), p.57.
- ⁷⁰ For scholarship on the relationship between law and violence, see Walter Benjamin, 'Critique of Violence' in Peter Demetz, ed., *Reflections: Essays, Aphorisms, Autobiographical Writings* (New York, Harcourt Brace Jovanovich, 1978), p.287; Robert M. Cover, 'Violence and the Word', *Yale Law Journal* 95 (1986), pp.1601-29; or Austin Sarat, ed., *Law, Violence, and the Possibility of Justice* (Princeton, NJ, Princeton University Press, 2001)
- ⁷¹ Boire, 'Legalizing Violence', p.583.
- ⁷² Boire, 'Legalizing Violence', p.582.
- ⁷³ Fanon, *Black Skins, White Masks*, p.2.
- ⁷⁴ For Augustinian engagements with the problem of theodicy see William E. Mann, ed., *Augustine Confessions* (Lanham MD, Rowman & Littlefield Publishers, 2006).
- ⁷⁵ Mann, *Augustine Confessions*, p.116.
- ⁷⁶ St Augustine, *The Enchiridion on Faith, Hope and Charity* (Washington, DC, Regenery Publishing, 1996), p.11.
- ⁷⁷ Fanon, *Wretched of the Earth*, p.8.
- ⁷⁸ Fanon, *Black Skins, White Masks*, p.107.
- ⁷⁹ Fanon, *Wretched of the Earth*, p.41.
- ⁸⁰ Gordon, *What Fanon Said*, p.20..
- ⁸¹ Fanon, *Black Skins, White Masks*, p.8.
- ⁸² Fanon, *Black Skins, White Masks*, p.147.
- ⁸³ Fanon, *Black Skins, White Masks*, p.8.
- ⁸⁴ Fanon, *Wretched of the Earth*, p.8.
- ⁸⁵ Fanon, *Wretched of the Earth*, p.40.
- ⁸⁶ Fanon, *Black Skins, White Masks*, p.113.

⁸⁷ Fanon, *Black Skins, White Masks*, p.141.

⁸⁸ Jean-Paul Sartre and John MacCombie, 'Black Orpheus' *The Massachusetts Review* 6.1 (Autumn, 1964-Winter, 1965), pp. 13-52, p. 49.

⁸⁹ Fanon, *Black Skins, White Masks*, p.101.

⁹⁰ Fanon, *Black Skins, White Masks*, p. 101

⁹¹ Fanon, *Wretched of the Earth*, p.99.

⁹² Fanon, *Wretched of the Earth*, p.105.

⁹³ Fanon, *Wretched of the Earth*, p.65.

⁹⁴ Fanon, *Wretched of the Earth*, p.43.

⁹⁵ Fanon, *Wretched of the Earth*, p.211.

⁹⁶ Fanon, *Wretched of the Earth*, p.54.

⁹⁷ Jean-Paul Sartre, Preface to Frantz Fanon, *Wretched of the Earth*, pp.7-35.

⁹⁸ Karl Marx, *Capital: A Critique of Political Economy* (London, Penguin, 2004), I, p.873: 'primitive accumulation plays in Political Economy about the same part as original sin in theology. Adam bit the apple, and thereupon sin fell on the human race.'